

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 26, 2003, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Linda Radler, Chairman  
James Ward  
Robert Bartholomew  
Paul Schultz

**BOARD MEMBERS ABSENT:** Mary Voelker

**SECRETARY TO THE BOARD:** Mary E. Finet

**OTHERS PRESENT:** Anthony and Sharon Graziano, BA03:001, petitioners  
Steve & B.J. Droegkamp, Droegkamp Builders, BA03:001, builders  
Edward Cohen, BA03:007, petitioners  
Craig and Ellen Hueffner, BA03:009, petitioners  
M. Brook and James Eberlein, BA03:009, neighbors  
Susan Agen, BA03:009, neighbor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Ward *I make a motion to approve the Summaries of the Meetings of January 15, 2003 and January 29, 2003.*

The motion was seconded by Mr. Schultz and carried with three yes votes. Mr. Bartholomew abstained because he was not present at those meetings.

**NEW BUSINESS:**

**ATTENDANCE OF BOARD MEMBERS AT THE ZONING BOARD OF ADJUSTMENT & BOARD OF APPEALS WORKSHOP TO BE CONDUCTED AT THE KENOSHA COUNTY CENTER ON MARCH 17, 2003.**

Mr. Ward *I make a motion to approve the attendance of Board Members at the Zoning Board of Adjustment & Board of Appeals Workshop to be conducted at the Kenosha County Center on March 17, 2003.*

The motion was seconded by Mr. Bartholomew and carried unanimously.  
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**BA02:137 MIKE AND DAGMARA COSTELLO**

This request was withdrawn by the petitioners.

**BA03:001 ANTHONY AND SHARON GRAZIANO**

Mr. Ward *I make a motion to deny the request in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. A reasonable use of the property exists with the present 2,514 sq. ft. house and 1,308 sq. ft. of garage space. While the petitioners may desire to remodel and expand their residence and may have personal needs that require them to make modifications to their residence, the personal circumstances of property owners cannot be considered as a reason for the granting of variances. Modifications could be made to the residence by remodeling the interior, converting the attached garage to living area, or expanding it in conformance with the locational requirements of the Ordinance. Granting variances to permit the proposed additions to extend closer to the wetland than the existing residence would be detrimental to the environmental quality of the wetland and contrary to the public interest. In addition, it would not be in conformance with the purpose and intent of the Ordinance to create a non-conforming offset and a non-conforming floodplain setback when the existing residence is in conformance with the offset and floodplain setback requirements. Therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

**BA03:007 EDWARD COHEN AND CAROL VANDENBERG**

Mr. Schultz *I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the following modifications:*

*Condition #5 shall be changed to read, "The footprint of the new garage, whether it is a two-car garage or a one-car garage with a carport, shall be no larger than 22 ft. x 24 ft. and the overhang on the northwest side shall not exceed 1 ft. in width."*

*Condition #12, requiring removal of the non-conforming shed near the lake, shall be eliminated. This is because it was explained at the hearing that the shed is also a pump house, making it difficult to remove.*

The motion was seconded by Mr. Bartholomew and carried with three yes votes. Mr. Ward abstained.

The staff's recommendation was for denial of the requested variance to remodel a non-conforming structure in excess of 50% of its fair market value to permit the existing foundation to be incorporated in the construction of the new garage and denial of the requested offset variance and the requested special exception from the accessory building floor area ratio requirement to permit the construction of a larger garage, but approval of variances from the road setback and open space requirements to permit the construction of a new garage on a new foundation, subject to the following conditions:

1. The new garage may be located as close as 3 ft. to the shed on the adjacent lot to the northwest, as measured to the outer edges of the walls, as permitted under the "clustering" provision of the Ordinance. If the new garage is closer than 10 ft. to the shed or to the detached garage on the adjacent lot to the northwest, it must contain a firewall sufficient to meet the one-hour fire rating contained in the building code.
2. If the new garage is less than 3 ft. from the northwest lot line, as measured to the outer edge of the wall, a Declaration of Restrictions, prohibiting the construction of a fence between the detached garage on the subject property and the shed on the adjacent lot to the northwest and permitting the owners of both properties to enter the adjacent property for the purpose of maintaining said buildings, must be signed by the owners of both parcels, notarized, and recorded in the Register of Deed's office, prior to the issuance of a zoning permit.
3. If the owner of the adjacent property to the northwest does not agree to the above-described Declaration of Restrictions, the new garage must be located at least 3 ft. from the northwest lot line, as measured to the outer edge of the wall.
4. The new garage shall be located no closer to the road than the existing garage.
5. The footprint of the new garage shall be no larger than 16 ft. x 24 ft. and the overhang on the northwest side shall not exceed 1 ft. in width.
6. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft.
7. Prior to the issuance of a zoning permit, a complete set of plans for the proposed garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a zoning permit, an updated Plat of Survey, showing the offset of the shed on the adjacent lot to the northwest from the common lot line and a staked-out location for the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

9. When preparing the updated Plat of Survey required above, the surveyor shall also note the location of the natural gas line leading to the residence. If the proposed garage location is over the gas line, the petitioners must submit written verification from the utility company that the new garage may be constructed over the gas line or the gas line must be relocated so as not to interfere with the proposed garage.
10. Prior to the issuance of a zoning permit, the Summit Town Board must approve the location of the new garage partially within the established road right-of-way, and evidence of that approval must be submitted to the Planning and Zoning Division staff.
11. A Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating that the new garage will be located partially within the established road right-of-way and if, in the future, any portion of the garage should interfere with necessary road improvements, that portion of the garage must be removed at the owner's expense. Prior to the issuance of a zoning permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff.
12. The non-conforming shed near the lake must be removed from the property no later than six (6) months after the issuance of a zoning permit for the new garage. *Note: This will eliminate the need for a special exception from the maximum permitted accessory building floor area ratio.*

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of a variance to remodel a non-conforming structure in excess of 50% of the fair market value of the structure, which is necessary to permit the existing foundation to be incorporated in the construction of a new garage, would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. The construction of a new garage on a new foundation, in conformance with the recommended conditions, will result in a reasonable use of the property. Similarly, denying the requested offset variance will not prevent a reasonable use of the property because the "clustering" provision of the Ordinance will allow the construction of a new larger garage without an offset variance. If necessary to accommodate a new larger garage, the gas line leading to the residence could be relocated or, as we have been informed by the Town of Summit Building Inspector, it may be possible to construct the new garage over the gas line, with the permission of the utility company.

A hardship does exist with respect to the requested road setback and open space variances. Since the total lot area of 6,024 sq. ft. is less than the minimum required open space, with a "sewer reduction", of 7,000 sq. ft., it is impossible to construct any garage on the property without an open space variance. The new garage cannot be located farther from the road due to the location of the grinder pump. The proposed road setback for the new garage is the same as the road setback of the existing garage, which is not a safety hazard and is not contrary to the public interest. Finally, the approval of road setback and open space variances, with the recommended

conditions will result in the removal of the extremely non-conforming shed near the lake and

eliminate the need for a special exception from the accessory building floor area ratio requirement. Therefore, the approval of road setback and open space variances, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA03:009 CRAIG AND ELLEN HUEFFNER**

Ms. Radler

*I move that we deny the request in accordance with the staff's recommendation, as stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. Construction of the proposed addition would increase the floor area of the residence from 928 sq. ft. to 4,203 sq. ft. and add a 952 sq. ft., four-car attached garage, which would be tantamount to the construction of a new residence. If the petitioners feel they need to have a larger residence in order to have a reasonable use of the property, a new larger residence could be constructed on the property, in conformance with all Ordinance requirements, without any variances. Further, it is the intent of the Ordinance that non-conforming structures should be eliminated over time and the construction of the proposed addition would only serve to perpetuate the existence of the non-conforming residence. Therefore, it would not be within the purpose and intent of the Ordinance to grant the requested variances.

**OTHER ITEMS REQUIRING BOARD ACTION:**

**ADJOURNMENT:**

Mr. Bartholomew

*I make a motion to adjourn this meeting at 8:22 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment